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& GARIN LLP**

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BY CERTIFIED MAIL

June 28, 2013

Curt Spalding, Regional Administrator
EPA New England, Region 1
5 Post Office Square - Suite 100
Boston MA 02109-3912

Eric Holder, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001


Bob Perciasepe, Acting Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Re: Notice of Proposed Consent Decree in
Clean Water Action v. George Apkin & Sons, Inc.
Civ. Action No. 1:12-CV-10881

Dear Sirs and Madam:

Enclosed pursuant to 40 CFR § 135.5 please find an executed copy of the parties' proposed Consent Decree resolving the above captioned action brought under the citizen suit provision of the Federal Water Pollution Control Act. Please feel free to call me if you have any questions about the enclosed. Thank you.

Sincerely,



Nora J. Chorover

Enclosures

cc: Steven Pagnotta, Esq.

Plaintiff's counsel has today sent copies of the fully executed Consent Decree to the Administrator, Environmental Protection Agency, Washington, DC 20460, and the United States Department of Justice, Citizen Suit Coordinator, Environment and Natural Resources Division Law and Policy Section, P.O. Box 4390, Ben Franklin Station, Washington, D.C. 20044-4390 in accordance with the requirements of the statute and with 40 CFR § 135.5. Counsel for plaintiff will inform the Court of the date upon which the Administrator and the Attorney General receive copies of the Consent Decree and the date on which the United States' 45 day review period expires.

The parties jointly request that the attached Consent Decree be entered by the Court at the expiration of the 45 day review period set forth in 33 U.S.C. § 1365(c)(3).

June 28, 2013

/s/ Nora J. Chorover
NORA J. CHOROVER (BBO # 547352)
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, 5th Fl.
Boston, MA 02114
Phone: 617-742-5800
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nchorover@sswg.com

Attorneys for Plaintiff
CLEAN WATER ACTION

June 28, 2013

/s/ Stephen N. Pagnotta
Stephen N. Pagnotta, BBO #387390
DONOVAN & O'CONNOR, LLP
1330 Mass MoCA Way
North Adams, MA 01247
Phone: 413-663-3200
Face: 413-663-7970
mail@docatty.com

Attorneys for Defendant
GEORGE APKIN & SONS, INC.

CERTIFICATE OF E-SERVICE

I hereby certify that the parties' Notice of Commencement of 45 Day Review Period, filed electronically through the ECF system with the Court on June 28, 2013, has been sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 28, 2013

Nora J. Chorover
NORA J. CHOROVER (Bar No. 547352)

Attorney for Plaintiff
CLEAN WATER ACTION

States Environmental Protection Agency (the "Storm Water Permit"). *See* U.S.C. §§ 1311(a), 1342(a), 1342(p); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008);

WHEREAS, on March 9, 2012, Clean Water Action provided notice of alleged violations of the Act, and of Clean Water Action's intention to file suit against George Apkin & Sons to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region I; the Massachusetts Department of Environmental Protection; and to George Apkin & Sons, pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, since it received Clean Water Action's March 26, 2012 notification, George Apkin & Sons has done certain work at the Facility that will improve the quality of the water discharged from the Facility, including, but not limited to, relocating metal filings from the exterior to the interior of buildings, pulling back scrap files from the edges of the property, excavation and regrading throughout the property and installation of filters in catch basins and improving monitoring and stormwater sampling practices.

WHEREAS, George Apkin & Sons anticipates that these enhancements, together with implementation of the BMPs and other measures set forth herein and in George Apkin & Sons' Storm Water Pollution Prevention Plan ("SWPPP"), will ensure compliance with applicable state water quality standards and any applicable benchmark concentrations or other effluent standards set forth in the Storm Water Permit;

WHEREAS, the parties have decided that is in the best interest of all parties to resolve the litigation by agreement without adjudication of any fact, allegation or law set forth above;

WHEREAS, this Consent Decree shall be submitted to the United States Department of Justice for the forty-five (45) day statutory review period, pursuant to 33 U.S.C. § 1365(c).

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

INJUNCTIVE RELIEF

1. George Apkin & Sons agrees to operate the Facility in compliance with the applicable requirements of the Storm Water Permit and the Act.
2. George Apkin & Sons shall implement the following measures:
 - A. Compliance Monitoring. George Apkin & Sons shall ensure that samples collected are “representative of the volume and nature of the monitored activity.” George Apkin & Sons shall comply with the terms of the Storm Water Permit, including Section 6 of the permit, and with Appendix B, sections 10-12. George Apkin & Sons shall follow the procedures set forth in EPA's Industrial Storm Water Monitoring and Sampling Guide (March 2009). George Apkin & Sons shall engage Environmental Compliance Services, Inc. or another qualified environmental consulting company to collect the samples quarterly during the term of this Agreement. Sampling events shall be preceded by at least three working days without storm water discharge from the sampled outfall. George Apkin & Sons shall provide Clean Water Action with copies of the analytical laboratory results of the sampling within seven days of receiving them. Nothing in this paragraph limits George Apkin & Sons's sampling obligations under the Storm Water Permit.

B. Reporting Practices. George Apkin & Sons shall report monitoring data collected pursuant to the Storm Water Permit to EPA in accordance with section 7.1 of the Storm Water Permit and shall note information required under Section 6 of the Storm Water Permit and, to the extent applicable, Appendix B, sections 10-12.

C. Control Measures.

1. Within 30 days of entry of this Consent Decree, George Apkin and & Sons shall pull back and/or relocate any scrap materials from the southerly and westerly border of the Facility in order to permit the construction and maintenance of the berms/swales as set forth below.

2. Within 30 days of entry of this Consent Decree, George Apkin & Sons shall submit all necessary and appropriate requests to relevant governmental entities to obtain the permits and approvals as necessary to permit the:

a. construction and maintenance of a berm along the southerly border of the facility to ensure that no stormwater exits the Facility into the old river bank (the "South Berm") as depicted in Exhibit A hereto;

b. construction and maintenance of a berm or swale along the westerly border of the facility running from the westerly terminus of the South Berm to the northwest corner of the facility at approximately the location of Stormwater outfall #1 (the "West Berm or Swale") as depicted in Exhibit A hereto;

- c. elimination of Stormwater outfalls 2, 3 and 4 and reconstruction of Stormwater outfall 1;
 - d. construction and maintenance of up to 4 check dams along the West Berm or Swale to allow sediment to settle.
 - e. construction and installation appropriate structural pre-treatment and treatment controls into which stormwaters shall be diverted prior to its discharge at Stormwater outfall #1 in the event such pre-treatment is required as provided pursuant to paragraph 2(C)(6), below.
3. Thereafter, George Apkin & Sons will timely take any necessary further actions to obtain the necessary government permits and approvals to carry out the actions described in paragraph 2(C)(2), above.
4. George Apkin & Sons shall notify clean Water Action in writing within fifteen (15) days after it becomes aware that one or more governmental entities from which a permit or approval is necessary will not approve the actions described in paragraph 2(C)(2), above. Should this occur, the parties will negotiate in good faith, on a timely basis, in an attempt to agree on modifications of this Consent Decree that may be necessary to obtain the required governmental approvals and/or any other modifications that may be necessary in light of George Apkin & Sons' inability to obtain government permits and approvals of the actions described in paragraph 2(C)(2). The foregoing shall not restrict George Apkin & Sons from agreeing to minor revisions to those actions in the course of

obtaining governmental approvals, provided such revisions do not materially change the substance or performance of the actions described in paragraph 2(C)(2).

5. George Apkin & Sons will complete these improvements within 90 days of receipt of authorization from the North Adams Conservation Commission to undertake this work.

6. Upon completion of these improvements, George Apkin & Sons shall perform sampling required by this Consent Decree at the reconstructed Stormwater outfall #1 prior to its discharge into the existing wooded slope at the northwest corner of the facility.

7. If sampling performed pursuant to paragraph 2(C)(6), above, indicates that discharged stormwaters do not meet the applicable state water quality standards, or any applicable benchmark concentrations, or other effluent standards set forth in the StormWater Permit, then George Apkin & Sons, shall act expeditiously to design, construct and implement appropriate structural pre-treatment and treatment controls into which stormwaters shall be diverted prior to its discharge at Stormwater outfall #1. Such controls shall be designed to meet applicable state water quality standards, applicable benchmark concentrations, and/or other effluent standards set forth in the Storm Water Permit.

8. Upon completion of these improvements, George Apkin & Sons shall provide written notification to Clean Water Action of such completion (the "Notice of Completion").

D. Operation and Maintenance of Storm Water Controls. George Apkin & Sons shall maintain structural stormwater controls at the site in proper operating condition.

E. Involvement by Clean Water Action.

1. George Apkin & Sons shall permit representatives of Clean Water Action to perform up to two site visits to the Facility during normal daylight business hours during each year that this Decree is in effect; provided that Clean Water Action notifies George Apkin & Sons in writing at least two (2) business days in advance of any such site visit.

2. For the term of this Decree, George Apkin & Sons shall provide Clean Water Action with copies of all documents it submits to EPA, the Commonwealth of Massachusetts and/or the City of North Adams concerning the Facility's storm water discharges, including but not limited to (a) all documents and reports submitted as required by the Storm Water Permit; (b) all laboratory reports and analytical results of storm water sampling performed by or for George Apkin & Sons; and (c) all reports of the quarterly and annual Facility inspections and visual assessments required by the Permit. Such documents and reports as are submitted to governmental entities shall be submitted electronically to Clean Water Action by emailing them to nchorover@sswg.com contemporaneously with submission

to the governmental entity. All other such documents shall be submitted to Clean Water Action in the same manner, within seven (7) business days of their completion.

3. To expedite its compliance monitoring activities as provided by this Consent Decree, Clean Water Action has provide a compliance questionnaire to George Apkin & Sons in the form attached hereto as Exhibit B. George Apkin & Sons shall complete the questionnaire to the best of its knowledge and provide the completed questionnaire to Clean Water Action at the same time that it provides copies of its quarterly monitoring reports.

PAYMENT, FEES AND COSTS

3. Within 15 days of the Effective Date, George Apkin & Sons shall pay the sum of \$35,000 to the Hoosic River Watershed Association, Inc. for use on projects benefitting water quality in the Hoosic River. The payment to the Hoosic River Watershed Association shall be conditioned on the following: (a) the payment or any portion thereof shall not be disbursed or otherwise granted directly or indirectly to Clean Water Action; and (b) projects funded by the payment shall be designed to benefit water quality within thirty (30) miles of the Facility. Payments shall be made out to Steve McMahon, Executive Director and shall be delivered by certified mail, return receipt requested to: Hoosic River Watershed Association, 906 Main Street, Williamstown, MA 01267. A copy of such payment shall be provided to Clean Water Action.

4. Within 15 days of the Effective Date, George Apkin & Sons shall pay the sum of \$30,000 to the Hoosic River Revival for use on projects benefitting water quality in the Hoosic River.

The payment to the Hoosic River Revival shall be conditioned on the following: (a) the payment or any portion thereof shall not be disbursed or otherwise granted directly or indirectly to Clean Water Action; and (b) projects funded by the payment shall be designed to benefit water quality within thirty (30) miles of the Facility. Payments shall be made out to Judith Grinnel at Hoosic River Revival, P.O. Box 434, North Adams, MA 01247. A copy of such payment shall be provided to Clean Water Action.

5. Within 15 days of the Effective Date, George Apkin & Sons shall reimburse Clean Water Action in the amount of \$50,000 to defray Clean Water Action's investigation fees and costs, expert fees and costs, and attorneys' fees incurred up to the date of entry of this Consent Decree. Payments shall be made by certified check or money order, made out to Stern, Shapiro, Weissberg & Garin, LLP, Client Trust Account, and be delivered by certified mail, return receipt requested to Nora J. Chorover, at the address listed in paragraph 17.

6. Within sixty days of the Effective Date of this Consent Decree, George Apkin & Sons shall pay to Clean Water Action \$15,000 to be placed in the Client Trust Account held for its benefit by Stern, Shapiro, Weissberg & Garin, LLP, to be used to reimburse Clean Water Action for fees and costs incurred to monitor George Apkin & Sons' compliance with this Consent Decree. Nothing in this paragraph shall restrict Clean Water Action's right to seek additional compensation for fees and costs it incurs to address George Apkin & Sons's noncompliance with this Consent Decree.

EFFECTIVE DATE OF CONSENT DECREE

7. The parties recognize that, pursuant to 33 U.S.C. §1365(c)(3), this Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this Consent Decree by the parties, Clean Water Action shall serve, or cause to be served, copies of this Consent Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. §135.5. Upon the expiration of the forty-five (45) day review period provided by 33 U.S.C. §1365(c)(3), the parties will jointly move the Court for entry of this Consent Decree and issuance of a Final Judgment and jointly seek a Stipulation of Dismissal with Prejudice; the date that the Court issues a Final Judgment and the Stipulation of Dismissal with Prejudice is the Effective Date of this Consent Decree.

RELEASE

8. Upon the Effective Date of this Consent Decree, Clean Water Action, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases George Apkin & Sons (and its agents, attorneys, representatives, employees, predecessors, successors, and assigns) from, and waives all claims, whether known or unknown, for damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure of George Apkin & Sons to comply with the Act, NPDES and/or the Storm Water Permit at the Facility, up to the

date on which this Consent Decree is executed by the parties. Clean Water Action does not release any claims to enforce any term of this Consent Decree.

9. George Apkin & Sons, on its own behalf and on behalf of subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Clean Water Action (and its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees) from, and waives all claims, whether known or unknown, which arise from or pertain to this Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to this Action up to the date on which this Consent Decree is executed by the parties. George Apkin & Sons does not release any claims to enforce any term of this Consent Decree.

MISCELLANEOUS PROVISIONS

10. This Consent Decree was entered by the parties as a settlement of disputed matters and neither the Consent Decree or any action taken pursuant to it shall be construed as an admission of any fact or liability, either expressed or implied, and the Consent Decree shall not be offered by the parties hereto or any other person as evidence of any alleged fact or liability, nor entered in any legal or administrative proceeding for any purpose other than to enforce the terms hereof.

11. The Term of this Consent Decree shall be three years after the date it was executed by both of the parties.

12. This Consent Decree shall be binding on the parties and on their successors and assigns.

13. The Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

14. In the event that any of the provisions of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15. The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.

16. The undersigned are authorized to execute this Consent Decree on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.

17. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Consent Decree are contained herein.

18. Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Clean Water Action pursuant to this Consent Decree shall be hand delivered or sent by U.S. Mail, postage prepaid, and addressed as follows:

Nora J. Chorover
Attorney for Clean Water Action
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, 5th Floor
Boston, MA 02114

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to George Apkin & Sons pursuant to this Consent Decree shall be sent by U.S. Mail, postage prepaid, and addressed as follows: each party shall notify the other parties of any change in their contact information within fourteen (14) days of any such change.

19. Signatures of the parties transmitted by facsimile are binding.

20. If for any reason the Court should decline to approve this Consent Decree in the form presented, the parties shall agree to work together to modify the Consent Decree within thirty (30) days to endeavor to make it acceptable to the Court.

21. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

Clean Water Action
By: Kathleen E. Aterno

Dated: June 24, 2013

George Apkin & Sons, Inc.
By:

Dated: _____

Approved:

United States District Judge

presented, the parties shall agree to work together to modify the Consent Decree within thirty (30) days to endeavor to make it acceptable to the Court.

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Clean Water Action

By: 

George Apkin & Sons, Inc.

By:

Approved:

Dated:

Dated: 6-25-13

United States District Judge

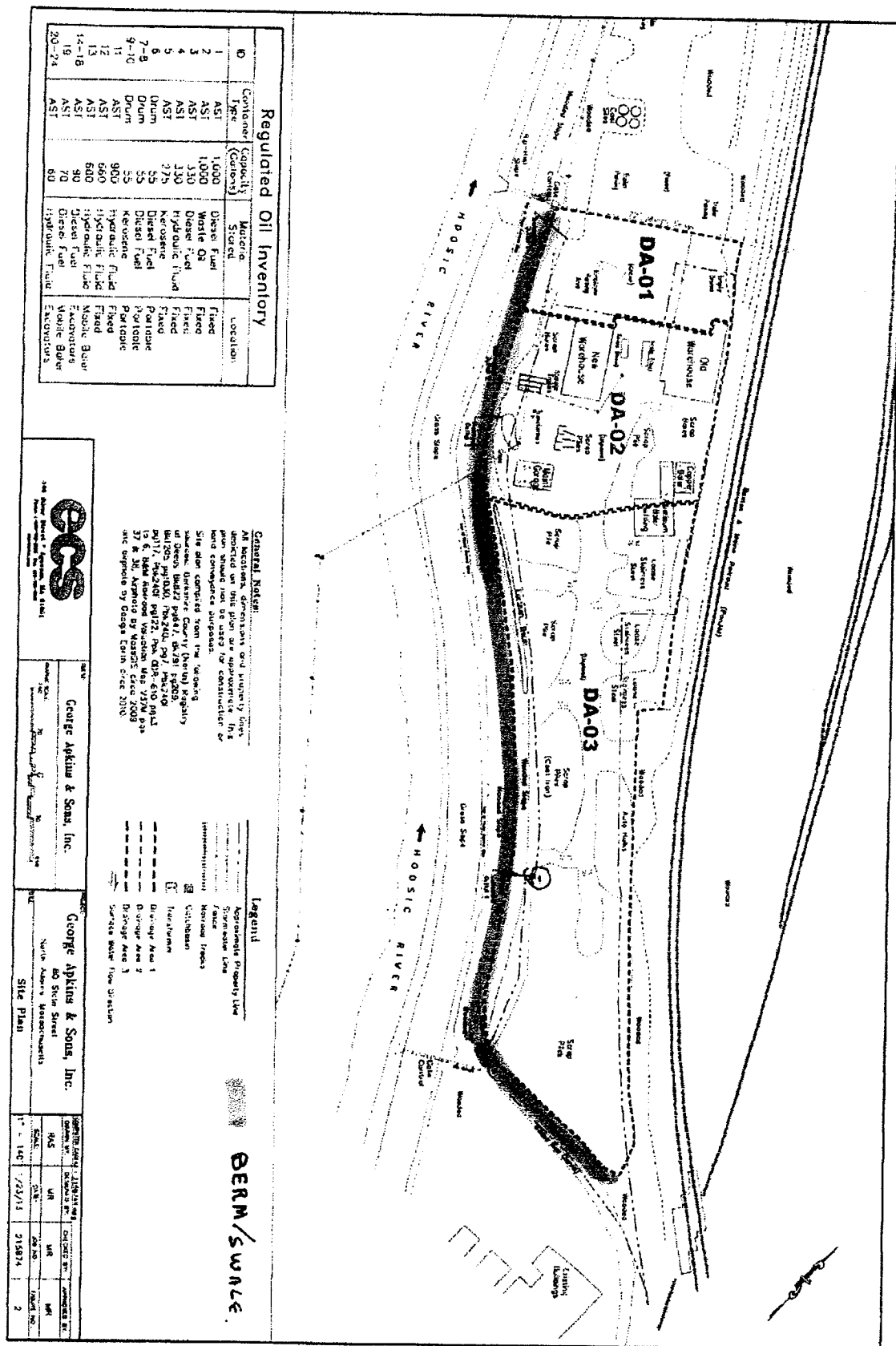


EXHIBIT B - COMPLIANCE QUESTIONNAIRE

Facility: GEORGE APKIN & SONS, INC.

Date: _____

Quarter: _____

1. Are all analytical results for this quarter's sampling attached hereto?

YES NO

If so, please list each outfall that a sample was taken from and the sampling date:

a. Outfall: _____	Sample Date: _____
b. Outfall: _____	Sample Date: _____
c. Outfall: _____	Sample Date: _____
d. Outfall: _____	Sample Date: _____
e. Outfall: _____	Sample Date: _____
f. Outfall: _____	Sample Date: _____
g. Outfall: _____	Sample Date: _____
h. Outfall: _____	Sample Date: _____

2. After a collection of 4 quarterly samples, (a) does the average of the 4 monitoring values for any parameter exceed the benchmark,
- or
- (b) is an exceedance of the 4 quarter average mathematically certain as a result of any quarterly monitoring conducted to date?

YES NO

If so, please list all actions taken to mitigate or eliminate exceedance and the actual or expected completion date of each action:

a. Outfall: _____	Action: _____
_____	Completion Date: _____
b. Outfall: _____	Action: _____
_____	Completion Date: _____
c. Outfall: _____	Action: _____
_____	Completion Date: _____

d. Outfall:	_____	Action: _____
	_____	Completion Date: _____
e. Outfall:	_____	Action: _____
	_____	Completion Date: _____
f. Outfall:	_____	Action: _____
	_____	Completion Date: _____
g. Outfall:	_____	Action: _____
	_____	Completion Date: _____
h. Outfall:	_____	Action: _____
	_____	Completion Date: _____
i. Outfall:	_____	Action: _____
	_____	Completion Date: _____

3. Has the facility conducted construction and/or implemented improvements/best practice measures as required under the Consent Decree?

YES NO

If so, please list all actions taken and actual or expected completion date:

a. Outfall:	_____	Action: _____
	_____	Completion Date: _____
b. Outfall:	_____	Action: _____
	_____	Completion Date: _____
c. Outfall:	_____	Action: _____
	_____	Completion Date: _____
d. Outfall:	_____	Action: _____
	_____	Completion Date: _____

e. Outfall:	_____	Action:_____
	_____	Completion Date:_____
f. Outfall:	_____	Action:_____
	_____	Completion Date:_____
g. Outfall:	_____	Action:_____
	_____	Completion Date:_____
h. Outfall:	_____	Action:_____
	_____	Completion Date:_____
i. Outfall:	_____	Action:_____
	_____	Completion Date:_____

4. Has the facility updated its Stormwater Management Plan or SWPPP in accordance with the Consent Decree?

YES NO

If so, please list the updates:

5. Has the facility made any changes/updates to its operation and maintenance plans in accordance with the Consent decree or otherwise?

YES NO

If so, please list all changes below, including date of change and whether change is ongoing:

6. Additional information and/or questions that will assist with compliance monitoring:_____

[illegible]